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PUC PROJECT NO. 51840

RULEMAKING ESTABLISHING	§	BEFORE THE
ELECTRIC WEATHERIZATION	§	PUBLIC UTILITY COMMISSION
STANDARDS	§	OF TEXAS

TEXAS INDUSTRIAL ENERGY CONSUMERS' COMMENTS ON
STAFF'S DRAFT RULE AND QUESTIONS

I. INTRODUCTION

Texas Industrial Energy Consumers (TIEC) appreciates the opportunity to provide additional feedback as Commission Staff continues developing weatherization rules to implement Senate Bill (SB) 3. TIEC values this iterative process and believes it will result in a balanced and well-reasoned final rule. As noted in prior comments, TIEC members will be impacted by this rule both as ERCOT retail customers, and also as generation owners. As a result, TIEC is interested in a final rule that achieves the objectives of SB 3 in a way that maximizes grid reliability in the most cost-effective manner and does not inappropriately shift investment risk to ERCOT customers. TIEC remains sensitive to the potential implications of requiring costly retrofits for existing units and the potential countervailing impacts this could have on reliability. Additionally, TIEC supports a final rule that recognizes the unique circumstances that may apply to power generation companies (PGCs) at industrial sites.

Pursuant to the Commission's request, the following is an Executive Summary of TIEC's comments:

Response to Preamble Question #2:

- "Cost recovery" from retail customers for competitive generators' weatherization costs is neither justified or supported by PURA.
- Many reliability requirements impose costs on competitive market participants, and retail customers in a deregulated market are not responsible for bearing those costs.
- The Legislature considered this issue, and ultimately provided no recourse to retail customers for generator weatherization costs.
- References to PURA Chapter 36 and other regulated rate requirements for electric utilities do not apply in this context, based on plain statutory language.

Comments on Rule Language

○ Definition of “Generation Entity”

- Minor clarifications are needed to the proposed definition of “generation entity” to appropriately limit the rule’s application to Power Generation Companies (PGCs). The definition should apply to Resource Entities only in their capacity as representing a Generation Resource.

○ Proposed Weatherization Standards.

- Weatherization standards should be based on a percentile of historical conditions, and should address items such as the length of time a unit is expected to withstand certain conditions, and any other weather factors the unit should be expected to withstand. This matches the expectations of a prudent operator.
- At this time, TIEC is unable to judge the specific proposed percentiles and believes the study contemplated by the rule should potentially be conducted before selecting metrics.

○ Process for Considering Individual Circumstances

- TIEC proposes language that would allow an entity to petition for a tailored set of weatherization requirements based on factors like technological infeasibility, undue cost burden relative to the reliability benefits, or unjustified adverse impacts to a manufacturing site.

II. COMMENTS ON PREAMBLE QUESTIONS

2. *Do existing market-based mechanisms provide sufficient opportunity for cost recovery to meet the weather reliability standards proposed in the discussion draft? If not, what cost recovery mechanisms should be included in the proposed rule?*

“Cost recovery” from retail customers for weatherization costs is not appropriate or supported by PURA. Competitive generators are responsible for meeting a host of reliability requirements to participate in the ERCOT market—many that come at a cost. There has never been “cost recovery” provided to competitive entities for complying with reasonable reliability standards, and weatherization costs should be no different. As the Commission is undoubtedly aware, cost recovery for weatherization measures was *extensively* discussed during the legislative session, and no statutory changes were made to permit these costs to be recovered from ERCOT retail customers. TCPA has correctly acknowledged that “SB 3 does not provide a specific funding

mechanism for cost recovery to comply with weatherization mandates.”¹ Nor does any other provision of PURA.

When ERCOT was deregulated, an essential “benefit of the bargain” for customers was to shift capital investment risk from retail customers to competitive generators. In exchange, generators are paid a market clearing price for energy and ancillary services—not their actual cost—and have the opportunity to earn profits above what regulated rates would provide if they perform when the system needs them. ERCOT’s competitive market design financially rewards generators who are able to run reliably during times of system need. Generators who cannot run reliably during these events lose out on premium pricing to reflect the value of supply, and may have to replace their forward obligations at this premium pricing. This creates a strong incentive for companies to invest in cost-effective weatherization and other protective measures to ensure that they capture premium pricing (and avoid financial penalties) in periods when generation is most valued. Beyond these natural incentives, SB 3 specifically requires the Commission to create new ancillary services that will create an additional revenue stream for generators who invest in “above-and-beyond” weatherization and performance capabilities for extreme conditions. The costs of these supplemental services *will* be borne by customers. These reliability and ancillary services are the only additional revenue stream the Legislature enacted, and no further “cost recovery” from retail customers is appropriate for the proposed rule.

Contrary to prior comments by TCPA, the Commission’s regulated rate authority under Chapter 36 does not extend to cost recovery for market generators. TCPA suggested in earlier comments that the commission could somehow impose a charge under Chapter 36 to recover weatherization costs for generators. Specifically, TCPA cites Subchapter I of Chapter 36 which addresses securitizing *electric utilities’* storm recovery costs.² Chapter 36, in its entirety, applies

¹ Project No. 51840, TCPA Comments on Staff Questions at 3 (Jun. 23, 2021).

² See PURA § 36.401 (“The purpose of this subchapter is to enable *an electric utility* to obtain timely recovery of system restoration costs and to use securitization financing to recover these costs . . .”) (emphasis added).

only to “electric utilities,”³ which specifically excludes power generation companies (PGCs).⁴ In particular, Chapter 36 only permits regulated rates to be established for *utilities*, based on *a utility’s* capital investments and cost of service.⁵ Chapter 39, which addresses competitive wholesale and retail markets, provides that “production and sale of electricity is not a monopoly warranting regulation of rates, operations, and services . . . electric services and their prices should be determined by customer choices and the normal forces of competition.”⁶ As these provisions make clear, Chapter 36 does not authorize cost recovery from retail customers for competitive investments, through regulated utility rates or otherwise.

For these reasons, “cost recovery” for complying with reasonable weatherization standards is not justified on either policy or legal grounds.

III. COMMENTS ON DRAFT RULE LANGUAGE

A. *Definition of “Generation Entity”*

As noted in TIEC’s prior comments, the Legislature was explicit in applying the weatherization requirements in SB 3 only to market generators—specifically power generation companies (PGCs)—and not to self-generators who do not actively participate in the market. Under the ERCOT protocols, the corresponding registration category for a PGC is a “Generation Resource,” as opposed to a “Self-Generator.”

TIEC appreciates Staff reflecting this statutory direction in the draft rule by defining “Generation entity” as a “Resource Entity with one or more ERCOT- registered Generation Resource[s] or Energy Storage Resource[s].” However, a Resource Entity (RE) may represent both Generation Resources and Settlement Only Generators. Applying the requirements to all REs

³ See, e.g., PURA § 36.001(a) (“The regulatory authority may establish and regulate rates of an *electric utility* . . .”) (emphasis added).

⁴ PURA § 31.002 (6)(C).

⁵ PURA § 36.051 (“In establishing an electric utility’s rates, the regulatory authority shall establish the utility’s overall revenues at an amount that will permit the utility a reasonable opportunity to earn a reasonable return on the utility’s invested capital used and useful in providing service to the public in excess of the utility’s reasonable and necessary operating expenses.”); PURA § 36.053 (“Electric utility rates shall be based on the original cost, less depreciation, of property used by and useful to the utility in providing service.”).

⁶ PURA 39.001(a).

representing a Generation Resource creates ambiguity as to whether an RE representing **both** Generation Resources and Self-Generators must comply with the weatherization requirements for **all** facilities it represents. TIEC does not believe this is the rule's intent, but would prefer that this be clarified. TIEC proposes the following change to the definition:

Generation entity - ~~Any~~ ERCOT-registered Resource Entity ~~with one or more~~ acting on behalf of an ERCOT registered Generation Resource or Energy Storage Resource, as those terms are defined in the ERCOT Protocols.

B. Weatherization Standards

It is challenging to evaluate whether the weather criteria in the proposed rule are reasonable and achieve the desired level of reliability in the abstract. Market participants would likely be able to provide more meaningful comments on these metrics if the study envisioned by the rule were conducted prior to selecting the specific percentile standards. At a high level, it is also unclear what data set would be used to identify the relevant percentiles. For example, the 95th percentile of **all** weather hours would produce one outcome, whereas the 95th percentile of some subset of weather hours defined as “extreme,” either annually or potentially by season, would produce a much more stringent standard. Similarly, it is not clear whether this scenario analysis will be based on historical observed conditions (and over what time period) or some other data. This information would be helpful to determining whether the proposed percentiles are the right ones. As the draft rule acknowledges, the weather standards also need to be regional in nature, and the percentiles for these regions may differ depending on what variable is being evaluated (e.g., wind regions may differ from solar regions). Ultimately, the Commission (and ERCOT) should also specifically address items such as how long a unit should be able to withstand a particular temperature, and under what wind, precipitation, or other conditions. The study contemplated in the rule would likely be helpful in identifying the appropriate parameters.

Speaking from TIEC members' experience, a reasonable percentile standard based on historically observed weather conditions by weather zone would best align with industry practices, as well as market investment incentives. An entity investing in generation has **every incentive** to reasonably ensure their facility can actually operate through a reasonably expected range of conditions; this is precisely how a generation investment ultimately provides value. As a result, a

weatherization standard based on historical weather should essentially require a generation owner to act as a prudent operator, and generally should not create an undue burden for any unit. When industrial customers develop on-site generation, specifications and ratings are selected during the construction process to allow the unit to perform under a reasonable range of expected weather conditions. Post-construction, if the generation unit fails during a weather event, the site will typically conduct a thorough analysis to identify the failure points and implement protections to prevent those failures in the future. Frequently, a third-party is brought in to conduct this analysis. Based on this analysis, industrial generators will choose the most cost-effective manner to address the identified issues and risks. As a result, TIEC believes that using historical weather data to establish weatherization criteria and preparation measures is the most reasonable approach and best matches what a reasonable operator should be expected to anticipate in building and maintaining a generation unit.

The rule proposes to establish a default weatherization standard and separate, more stringent standards for certain units providing important reliability or ancillary services during extreme weather conditions. Without more data, TIEC cannot meaningfully opine on the specific percentiles given. As noted above, some higher weatherization standard may be appropriate for Black Start Service (BSS) units, as this is an existing service with a defined objective. However, the “enhanced” standard for certain seasonal ancillary services, as contemplated under SB 3, seems premature. The services envisioned under SB 3 should be developed to meet identified reliability needs, and the eligibility requirements for resources providing the services should accordingly be designed to meet these defined objectives. While TIEC agrees that a heightened weatherization standard may be needed for these services, it would be more effective to identify the appropriate standard in the context of developing the specific services.

Finally, TIEC strongly supports the rule’s proposal to apply different standards by weather zones. In a state as large as Texas, it is absolutely critical to differentiate the standards by geographical region and prevailing climate. Conditions in southeast Texas are much different from the Panhandle, and the weatherization standards should appropriately reflect this distinction.

C. The rule should establish a process for considering individual circumstances.

There will potentially be situations where complying with objective weatherization standards is technologically infeasible, cost prohibitive, or may accelerate a potential retirement decision for an existing market unit. Ignoring these circumstances could actually degrade reliability, working at cross purposes with intent of the proposed rule. In comparable situations where a new reliability standard imposes an extreme burden on an existing resource, it is common to either grandfather certain facilities or provide an avenue for a more tailored standard.

Further, as explained in TIEC's initial comments, the default weatherization standards could create unique issues for generators that are integrated with other facilities and processes at an industrial site. This is particularly a concern for cogeneration units that must operate in concert with a separate steam host and other manufacturing processes. Recognizing the integrated nature of industrial sites, PURA 39.151(l) has long provided that "[n]o operational criteria, protocols, or other requirement established by an independent organization, including the ERCOT independent system operator, may adversely affect or impede any manufacturing or other internal process operation associated with an industrial generation facility, except to the minimum extent necessary to assure reliability of the transmission network." This provision must be read in conjunction with the new weatherization requirements in SB 3 when applied to generation at industrial sites.

To address these issues, TIEC recommends that the Commission implement a process for an existing unit to petition for a tailored weatherization plan. This will allow the Commission to weigh the reliability benefits of weatherization against potential adverse outcomes for generators where the default standard create an undue burden. TIEC would expect these circumstances to be limited, but recommends adopting rule language that would allow a PGC to petition the Commission for tailored weatherization requirements. TIEC suggests the following language:

- (d)(1) Basic weather reliability standard. A generation entity must maintain weather preparation measures that reasonably ensure that its resource can provide service at the resource's applicable rated capability as defined by ERCOT under the 95th percentile of each of the extreme weather scenarios specified in the weather study approved by the commission under subsection (c) of this section. A generation entity may petition the commission to establish a tailored weather reliability standard for an existing unit if complying with the basic standard would be technologically infeasible, create an unjustified financial burden relative to the

reliability benefits, or would have an undue adverse impact on operations at an industrial site.

IV. CONCLUSION

TIEC appreciates the opportunity to provide this feedback in advance of a published rule and finds significant value in this phased comment process. TIEC looks forward to working with Commission Staff and other stakeholders to develop a final rule.

Respectfully submitted,

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